



### COMMENTS IN OPPOSITION TO AB 640

The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing manufacturers and distributors of motorcycles, scooters, motorcycle/ATV parts and accessories and members of allied trades.

The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers and distributors of all-terrain vehicles (ATVs) in the United States.

MIC and SVIA offer the following comments on AB 640 to illustrate our opposition to this legislation and set forth the negative consequences that enactment of this legislation would have on the interests of Wisconsin consumers and on motorcycle and ATV manufacturers and distributors.

#### General

- The Wisconsin Fair Dealership Law [Chapter 135 Wisconsin Dealership Practices] provides many protections for all Wisconsin dealers. There isn't any legitimate reason to single out one group of dealers and provide special and additional protection/regulation, which only serves to ultimately increase costs for consumers. Additionally Chapter 100.20, Methods of Competition and Trade Practices, provides that methods of competition and trade practices shall be fair and prohibits unfair methods of competition in business and unfair trade practices in business.
- Ultimately, we feel that this legislation is an example of unnecessary regulation. Regulating powersports vehicles will only serve to increase the cost of doing business and therefore increase the cost of powersports vehicles to Wisconsin consumers.
- Very few if any businesses enjoy such protections as are afforded by these provisions. Powersports dealers do not pay any franchise fee to the manufacturer or distributor for the privilege of becoming dealers. Accordingly, powersports manufacturers and distributors should not be required under law to provide protections to their dealers over and above those provided to other business owners in the free enterprise system.
- This increased regulation is used more by dealers who are not performing, or who simply want to hold onto a line in a particular market, and they will use the threat of costly litigation as a means to hold onto their dealership without performing. The dealers that are investing in the brand are harmed because underperforming dealers remain in the network for a longer period of time and offer consumers poor experiences.
- Consumers are harmed by these laws.
  - As noted above, these laws disproportionately protect poorly or underperforming dealers that often are not providing the appropriate level of sales and service support to consumers. For example, dealers that do not adequately stock product limit consumer choice.
  - Higher operation costs for manufacturers and distributors and increased litigation costs lead to higher product costs for consumers.
- In an industry and an economy that is no longer growing, increased costs jeopardize jobs.

### Specific Concerns:

#### 218.61 (1).

If this legislation is passed into law as presently drafted it will prohibit powersports vehicle manufacturers and distributors from offering various promotional programs to their dealers.

At present, Distributor A will offer to all same line make dealers in Wisconsin a promotional program opportunity. For example, if certain dealers choose to and timely order low-demand product then Distributor A provides incentive benefits to all such participating dealers. The benefits may take the form of floor plan assistance, special co-op advertising assistance, rebate, sales bonus or some other form. Some dealers participate in the program and others do not; it's the dealer's choice. These promotional programs provide a number of significant benefits to participating dealers: e.g., reduce inventory carrying costs, free up dealership operational capital, enable the dealer to better compete in the marketplace, and to pass along benefits to customers (dealer choice). If this legislation is passed into law as presently drafted, distributors will likely quit offering promotional programs altogether in Wisconsin in order to avoid violating the law in the following way. Dealer #1 chooses to participate in a promotional program in order to reduce her inventory going into the winter season and to seize the opportunity to promote utility ATV's, which previously sold well in her market. Dealer #2 chooses not to participate. Dealer #2 protests the promotional program, claiming that it "resulted in a lower actual price for Dealer #1", at program conclusion.

Frequently, a second distributor (Distributor B) will respond to Distributor A's promotional program by offering a promotional program opportunity to all of its dealers in Wisconsin. A competitive response like this will also be chilled if not eliminated.

This section states that manufacturers and distributors (OEMs) cannot sell at a lower price to one dealer over another. This section fails to allow for many reasonable programs offered by OEMs such as wholesale incentives based on product orders. It should be within the OEMs' reasonable discretion to allow for certain wholesale incentives if a dealer meets certain ordering requirements. If OEMs are not allowed to incentivize dealers using reasonable programs in Wisconsin, dealers in other states will be given an advantage by default.

This section eliminates OEMs' ability to provide different incentives to dealers in Wisconsin if they are based on floor plan lengths or marketing funds. For example, many OEMs allow dealers longer flooring terms if the dealer takes a higher allocation. The need for this is obvious – dealers that commit to a product line should be rewarded for their commitment. If a dealer chooses to take fewer products, he will obviously be in a better position to sell the lesser amount in a shorter period.

These provisions mean that OEMs cannot support dealers who want to stretch to build their market share. As long as the same offers made to the dealers are on proportionate terms, the OEM should be able to support the dealers that are taking on greater risk.

Finally, this language will create an impediment to a distributor lowering the price of its products after one or more dealer(s) in Wisconsin previously purchased the product at a higher price.

#### 218.61 (14).

This would unfairly make a manufacturer or distributor responsible for policing the location(s) at which an authorized dealer actually performs warranty service.

#### 218.61 (16).

"Retail" service labor rate is difficult to deal with for OEMs because "retail" service labor rate can be set by each individual dealer and can change from month to month. This creates confusion and conflict when determining the reimbursement amount, and allows for greater abuse of the process by the dealers.

In addition, most OEMs offer some types of incentives to dealers that guarantee them retail rates or even better than retail rates if they have suitably trained technicians. Higher levels of training significantly benefit consumers.

Again, this provision would only punish dealers who spend considerable effort, money and time to have and retain qualified technicians at their dealership. Ultimately this hurts consumers who rely on the dealers for quality service.

218.61 (18)

This section attempts to place the burden entirely on the OEM for warehousing all product and allows the dealer to be no more than an order taker if the dealer so chooses. While this may seem like a positive for the dealer, it will surely hurt the business model in most of the powersports industry and will cause compliant OEMs to become far less competitive because they cannot plan factory builds. For example, many OEMs build out a few months (and sometimes over a year), but usually more than 90 days out. If they cannot ask dealers to commit to an order more than 90 days out, they will be in an extremely difficult situation and product will become less available to consumers.

It puts the onus on OEMs to become storehouses of product to be ordered by dealers at their discretion. Unfortunately, OEMs, both foreign and US-based, must plan production schedules out for many months and sometimes years. If dealers are allowed to take product on an ad hoc basis (which would be the case if incentives like these are made illegal), OEMs will be unable to invest in research on new products due to the uncertainty and risk involved in the market.

In addition, this is an unworkable standard in reality because, for example, there is no 90-day inventory for a new product. Does that mean no new product can be sold to dealers in Wisconsin? Furthermore, it is also unclear as to when the 90-day inventory is to be calculated—at each order session, each month, etc., and if there is supposed to be some type of adjustment made. Surely, there will be dealers that will use this broad language to claim they get to make adjustments each month, when OEMs have a build plan based upon a 3-12 month build.

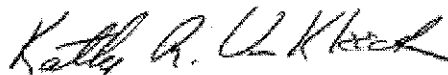
This section will also create an impediment to an OEM trying to enforce the terms of an order agreed to with a dealer by which the dealer was to purchase powersports vehicles at specific times during the year.

**In Summary:**

**As a consequence of the legislation, the interests of retail purchasers, distributors and manufacturers will be harmed in the following ways:**

- **Level of inter-brand and intra-brand competition for powersports products will decline in Wisconsin.**
- **Price of powersports products is expected to rise in Wisconsin.**
- **Demand for powersports products purchased from Wisconsin dealers will be dampened.**

Respectfully submitted:



Kathy R. Van Kleeck  
Sr. Vice President, Government Relations

## Assembly Transportation hearing for AB-640

The paperwork I have just given you shows what Polaris expectations of my stores for the August - February order period in August 2007. This is just one example of how unfair these manufactures can be. This order process takes place 2 times a year with Polaris for ATV and once a year for Snowmobile. So 3 times a year we are faced with this decision.

If you look at line 1 on the first page I sold 115 Polaris ATV's between August 2006 and February 2007 and because that industry has been declining I forecasted sales of 104 units. At the beginning of August I had 31 Polaris ATV's in stock. My projected inventory to meet my forecasted sales demand was 73 units in addition to the 31 units we had in stock. I also projected that I would carry over 20 more units in February 2008. Using this formula you can see that my desired order level was 93 units. Polaris felt I should order 191 units to qualify for the best terms (Level 1) or about 150 units to qualify for the minimum terms (Level 3). Any order less than level 3 would qualify for no rebate programs (these terms are shown on page 2). Keep in mind that at this point I would qualify under no terms. Then on pages 3 and 4 you can see what rebates I would not qualify for during August and September sales period. Under the best case scenario taking a Sportsman 800 I could loose out on up to \$1600.00 in rebates. These are units that retail price is \$10,000.00. If we could sell a \$10,000.00 unit at manufactures suggested retail (which we cannot) we would make \$1700.00. (17%). We typically are forced by competition to sell these units for at best a 10% margin or in this case \$1000.00. You can see by this example that I would feel a lot of pressure to order at there (Level 1). If I did not order at level One and competitors in my area did I could not compete as they would be capable of setting a new retail price on the units using there rebates.

A couple of things to keep in mind when looking at this scenario are

- 1) These rebates apply to units in stock and ordered so if I have units left over from the last order period I would not have any programs to help me move them out.
- 2) If I place the order that they demand to get the top level programs and I do not hit there sales numbers I would not have programs on the units left in my inventory at the end of February unless I ordered again.

This whole process becomes like a chain letter as long as I keep buying at there terms I am protected with rebates however my inventory continues to grow and at some point I must say no! It turns into legalized extortion!

Lee Van Zeeland Pres.  
Team Winnebagoland  
5827 Green Valley Rd  
Oshksoh WI 54904



Hwys. 41 & 76  
5827 Green Valley Rd.  
Oshkosh, WI 54904  
920-233-3070

**Lee Van Zeeland**

leev@teamwinnebago.com

**WHERE THE FUN BEGINS**

[www.teamwinnebago.com](http://www.teamwinnebago.com)

## **Teams 2008 1st term Polaris order**

True Sales Aug 06 through Feb 07	115
Projected Sales Aug 07 through Feb 08 (-10%)	104
Stock as of 8/1/07	31
Projected additional inventory to meet sales	73
Projected Carry over	20
Teams desired order	93
<b>Polaris demanded suggested order</b>	<b>191</b>
 Units that would be in stock in Feb. 2008	 98

# ATV WHOLESALE PROGRAM FALL 2007

	Level 1	Level 2	Level 3
Dealer Order Goal	Dealer Specific DSM	Dealer Specific DSM	Dealer Specific See DSM
<b>ORDER PERIOD: 7/23/07-8/20/07 (Orders must be submitted to DSM no later than 8/20/07 to receive benefits listed below)</b>			
Flooring	150 Days	120 Days	60 days
Power Play Retail Bonus	See Payout Matrix	See Payout Matrix	---
To qualify, dealer must achieve retail goal indicated in the payout matrix for the period 7/23/07 - 9/30/07. Retailed units must be registered by 9/30/07 and paid off by 10/10/07.			
Allocation of MY '07 Limited Edition Models	Preferred allocation of limited production models and non-currents	Preferred allocation of limited production models and non-currents	
Retail Programs	Consumer offers are identical for Levels 1, 2 and 3		
Fill-In Order Terms	150 days	90 days	30 days
Demo Program	6% rebate - 3 units	6% rebate - 3 units	3% rebate - 3 units

**NASHVILLE SHOW SPECIAL for Level 1 and Level 2 orders:** Place your ATV and RANGER orders (if applicable) at the dealer meeting in Nashville and receive 1 free Predator 90.

**EARLY ORDER INCENTIVE:** Dealer must place a qualified order within the DSM-recommended mix and shipment schedule. Dealer may not place a Youth order for more than 15% of their total order. Also, dealer may not place more than 15% of their total unit order for Jan/Feb delivery. Orders must be submitted to, and approved by DSM no later than 8/13/07 to receive benefits listed below.

Qualify for enhanced Power Play Retail Bonus	See Payout Matrix	See Payout Matrix	---
Additional Flooring on Stocking Order	30 days	30 days	30 days



**POLARIS®**

See the dealer web page under "Finished Goods – Program Summaries"

**PROGRAM ANNOUNCEMENT**

**U.S. Level 1, 2, 3 ATV DEALERS**

**(NC, NE, RM, SE Regions Only)**

**PROGRAM:**

**ATV-07-004-A**

**DATE:**

**7/23/07**

**Program Period: July 23 – September 30, 2007  
2007 and Prior Models**

ALL 2007 & Prior New ATV's	Standard Financing		Rebate Amount		Premium Financing		Spiff
Predator 50 2-stroke	YES	AND	\$50	OR	YES	AND	\$50
Predator 90 2-stroke	YES	AND	\$90	OR	YES	AND	\$50
Sportsman 90 2-stroke	YES	AND	\$90	OR	YES	AND	\$50
Predator 50 4-stroke	YES	AND	\$50	OR	YES	AND	\$50
Outlaw 90 4-stroke	YES	AND	\$90	OR	YES	AND	\$50
Sportsman 90 4 Stroke	YES	AND	\$90	OR	YES	AND	\$50
Phoenix	YES	AND	\$200	OR	YES	AND	\$50
Sawtooth	YES	AND	\$200	OR	YES	AND	\$50
Trail Blazer 250	YES	AND	\$250	OR	YES	AND	\$50
Scrambler 500 4x4	YES	AND	\$500	OR	YES	AND	\$50
Predator 500	YES	AND	\$500	OR	YES	AND	\$50
Outlaw 500	YES	AND	\$500	OR	YES	AND	\$50
Outlaw 525	YES	AND	\$525	OR	YES	AND	\$50
Trail Boss	YES	AND	\$330	OR	YES	AND	\$50
Hawkeye 2X4	YES	AND	\$300	OR	YES	AND	\$50
Hawkeye 4X4	YES	AND	\$300	OR	YES	AND	\$50
Sportsman 450	YES	AND	\$450	OR	YES	AND	\$100
Sportsman 500 H.O.	YES	AND	\$500	OR	YES	AND	\$50
Sportsman 500 EFI X2 Standard & Deluxe	YES	AND	\$500	OR	YES	AND	\$50
Sportsman 500 EFI Standard & Deluxe	YES	AND	\$500	OR	YES	AND	\$50
Sportsman 700 Twin	YES	AND	\$700	OR	YES	AND	\$50
Sportsman 700 EFI	YES	AND	\$700	OR	YES	AND	\$50
Sportsman 800 EFI Standard & Deluxe	YES	AND	\$800	OR	YES	AND	\$50
Sportsman 800 X2 EFI Standard & Deluxe	YES	AND	\$800	OR	YES	AND	\$50
Sportsman 6x6	YES	AND	\$500	OR	YES	AND	\$50





# LEVEL 1

## PAYOUT MATRIX

### POWERPLAY RETAIL REWARD

Retail Reward Period	July 23rd - September 30th
Retail Reward Goal	Retail = LY (min. 5)
Qualifying Models	All Models Qualify
Double-Down Bonus (EOI)	Order by 8-13-07
Power Play Bonus	Order by 8-20-07

### PAYOUT MATRIX

#### LEVEL 1

ACTUAL RETAIL vs. LY (min. 5) =

RETAILED MODEL

	POWER PLAY	DOUBLE-DOWN		
		120%	100%	75%
Sportsman 800 EFI, X2, Touring	\$400	\$800	\$400	\$100
Sportsman 700 EFI, X2	\$250	\$700	\$250	\$100
Sportsman 500 EFI, H0, X2, Touring	\$250	\$500	\$250	\$100
Outlaw, Predator, Scrambler	\$250	\$500	\$250	\$100
Sportsman 400/450	\$250	\$400	\$250	\$100
Sportsman 300, Hawkeye, Blazer, Boss	\$150	\$300	\$150	\$50
Phoenix, Sawtooth	\$100	\$200	\$100	\$50
Youth 90	\$50	\$90	\$50	\$25
Youth 50	\$50	\$50	\$50	\$25

# LEVEL 2

## PAYOUT MATRIX

### POWERPLAY RETAIL REWARD

Retail Reward Period	July 23rd - September 30th
Retail Reward Goal	Retail = LY (min. 5)
Qualifying Models	All Models Qualify
Double-Down Bonus (EOI)	Order by 8-13-07
Power Play Bonus	Order by 8-20-07

### PAYOUT MATRIX

#### LEVEL 2

ACTUAL RETAIL vs. LY (min. 5) =

RETAILED MODEL

	POWER PLAY	DOUBLE-DOWN		
		120%	100%	75%
Sportsman 800 EFI, X2, Touring	\$200	\$400	\$200	\$50
Sportsman 700 EFI, X2	\$150	\$250	\$150	\$50
Sportsman 500 EFI, H0, X2, Touring	\$150	\$250	\$150	\$50
Outlaw, Predator, Scrambler	\$150	\$250	\$150	\$50
Sportsman 400/450	\$150	\$250	\$150	\$50
Sportsman 300, Hawkeye, Blazer, Boss	\$75	\$150	\$75	\$25
Phoenix, Sawtooth	\$75	\$100	\$75	\$25
Youth 90	\$25	\$50	\$25	\$10
Youth 50	\$25	\$25	\$25	\$10